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(iv) Relocate a branch.

(c) *Criteria for delegated authority.* The following criteria must be satisfied before the authority delegated in paragraph (a) of this section may be exercised:

(1) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved except that this criterion does not apply to applications to establish messenger services and temporary branches;

(2) The applicant meets the capital requirements set forth in 12 CFR part 325 and the FDIC “Statement of Policy on Capital Adequacy” (12 CFR part 325, appendix B) or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR part 325 before or at the consummation of the transaction which is the subject of the filing, except that this criterion does not apply to applications to establish messenger services and temporary branches, or to relocate branches or main offices;

(3) Any financial arrangements which have been made in connection with the proposed branch or relocation and which involve the applicant’s insiders are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties;

(4) Compliance with the CRA, the NEPA, the NHPA, and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved;

(5) No CRA protest as defined in § 303.2(l) has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA;

(6) An applicant with one or more existing branches in a state other than the applicant’s home state has not failed the credit needs test in a host state under section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a);

(7) Additionally, for applications submitted to establish and operate a de novo branch in a state that is not the applicant’s home state and in which the applicant does not maintain a branch:

(i) Confirmation by the appropriate regional director (DOS) that the applicant has complied with that state’s filing requirements and that the applicant also has submitted to the host state bank supervisor a copy of its FDIC filing to establish and operate a de novo branch;

(ii) Determination by the FDIC that the applicant is adequately capitalized as of the date of the filing and will continue to be adequately capitalized and adequately managed upon consummation of the transaction;

(iii) Confirmation that the host state has in effect a law that meets the requirements of section 18(d)(4)(A) of the FDI Act (12 U.S.C. 1828(d)(4)(A)); and

(iv) Compliance with section 44(b)(3) of the FDI Act (12 U.S.C. 1831u(b)(3)); and

(8) Additionally, for applications submitted to relocate a main office from one state to another where the applicant seeks to retain branches in the state where the applicant’s main office exists prior to an interstate relocation of the main office, confirmation that the filing meets the requirements of section 18(d)(3)(B) of the FDI Act (12 U.S.C. 1828(d)(3)(B)).

Subpart D—Merger Transactions

§ 303.60 Scope.

This subpart sets forth the application requirements, procedures, and delegations of authority for transactions subject to FDIC approval under the Bank Merger Act, section 18(c) of the FDI Act (12 U.S.C. 1828(c)). Additional guidance is contained in the FDIC “Statement of Policy on Bank Merger Transactions” (2 FDIC Law, Regulations, Related Acts (FDIC) 5145; see § 309.4 (a) and (b) of this chapter for availability).

§ 303.61 Definitions.

For purposes of this subpart:

(a) *Merger transaction* includes any transaction:

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(1) In which an insured depository institution merges or consolidates with any other insured depository institution or, either directly or indirectly, acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution; or

(2) In which an insured depository institution merges or consolidates with any noninsured bank or institution or assumes liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution, or in which an insured depository institution transfers assets to any noninsured bank or institution in consideration of the assumption of any portion of the deposits made in the insured depository institution.

(b) *Corporate reorganization* means a merger transaction between commonly-owned institutions, between an insured depository institution and its subsidiary, or between an insured depository institution and its holding company, provided that the merger transaction would have no effect on competition or otherwise have significance under the statutory standards set forth in section 18(c) of the FDI Act (12 U.S.C. 1828(c)). For purposes of this paragraph, institutions are commonly-owned if more than 50 percent of the voting stock of each of the institutions is owned by the same company, individual, or group of closely-related individuals acting in concert.

(c) *Interim merger transaction* means a merger transaction (other than a purchase and assumption transaction) between an operating depository institution and a newly-formed depository institution or corporation that will not operate independently and that exists solely for the purpose of facilitating a corporate reorganization.

(d) *Optional conversion* (Oakar transaction) means a merger transaction in which an insured depository institution assumes deposit liabilities insured by the deposit insurance fund (either the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF)) of which that assuming institution is not a member, and elects not to convert the insurance covering the assumed deposits. Such transactions

are covered by section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)).

(e) *Resulting institution* refers to the acquiring, assuming or resulting institution in a merger transaction.

§ 303.62 Transactions requiring prior approval.

(a) *Merger transactions.* The following merger transactions require the prior written approval of the FDIC under this subpart:

(1) Any merger transaction, including any corporate reorganization, interim merger transaction, or optional conversion, in which the resulting institution is to be an insured state nonmember bank; and

(2) Any merger transaction, including any corporate reorganization or interim merger transaction, that involves an uninsured bank or institution.

(b) *Related provisions.* Transactions covered by this subpart also may be subject to other provisions or application requirements, including the following:

(1) *Interstate merger transactions.* Merger transactions between insured banks that are chartered in different states are subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u). In the case of a merger transaction that consists of the acquisition by an out of state bank of a branch without acquisition of the bank, the branch is treated for section 44 purposes as a bank whose home state is the state in which the branch is located.

(2) *Deposit insurance.* An application for deposit insurance will be required in connection with a merger transaction between a state-chartered interim institution and an insured depository institution if the related merger application is being acted upon by a federal banking agency other than the FDIC. If the FDIC is the federal banking agency responsible for acting on the related merger application, a separate application for deposit insurance is not necessary. Procedures for applying for deposit insurance are set forth in subpart B of this part. An application for deposit insurance will not be required in connection with a merger transaction (other than a purchase and